

REMARKS

Please note, Applicant responds to the outstanding Office Action as a non-final Office Action because both the non-final and final Office Action boxes were marked on the Office Action Summary but the full text of the Office Action indicated that the Office Action is non-final.

Claims 24-31 and 35-40 are presently under consideration. Claims 24, 29-31 and 38-40 are rejected under 35 U.S.C. 102(e) as being anticipated by Pruche et al. (U.S. Pat. Pub. 2003/0108542; hereafter “Pruche”); additionally, claims 24-26 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Lopukhin et al. (U.S. 5,489,510; hereafter “Lopukhin”). Applicant notes the allowability of claims 27-28 and 36-37; however, Applicant elects to amend the rejected claims and other claims not presently under consideration to further clarify the recited subject matter.

Applicant traverses the anticipation rejections based on Pruche and Lopukhin because each reference fails to disclose, teach or suggest all of the features recited in the rejected claims. For example, neither Pruche nor Lopukhin disclose, teach or suggest the claimed methods:

- “wherein the flowable indicator includes at least one dye which changes in color or color intensity when in solution with at least one substance found on human skin, wherein a visual change color or color intensity in the at least one dye is proportional to the amount of the oil present in solution, and wherein the flowable indicator is activated in response to a reaction of the flowable indicator with the at least one substance found on the skin after a period of time to effect a visually discernable change that is a visual change in the color or color intensity of the at least one dye of the flowable indicator” (independent claim 24);
- “wherein the flowable indicator is reactive with at least one substance found on the skin so as to change in color or color intensity in response to exposure to the at least one substance and wherein the flowable indicator is activated in response to a reaction of the indicator with the at least one substance found on the skin” and the method comprises “determining if the flowable indicator is activated by determining whether the flowable indicator has changed in color or color intensity” (independent claim 35);
- “wherein the flowable indicator is reactive with at least one substance found on the skin so as to change in color or color intensity in response to exposure to the at least one substance and wherein the flowable indicator is activated to change color or color

intensity in response to a reaction of the indicator with the at least one substance found on the skin after a period of time” (independent claim 38); or

- “wherein the indicator is reactive with at least one substance found on the skin so as to change color or color intensity, wherein the indicator is activated to change color or color intensity in response to a reaction of the indicator with the at least one substance found on the skin after a period of time” (independent claim 39).

Pruche merely discloses a method for evaluating skin type, which uses an applicator for applying a drop (e.g., 20 microliters) of colored substance onto the skin. That drop contains an aqueous substance, such as a solution of Erythrosin B and water. The substance can be made with a solvent other than water, such as an alcoholic solvent or a lipidic solvent as a function of the nature of the coloring agent.

As a result of the application, a mark is formed due to contact between the colored substance and the skin. The spreading of the drop and, therefore, the size of the mark is indicative of the greasy nature of the skin. As a result, the size of the mark is used to determine skin type, which can be used for recommending care treatment or cosmetics.

However, Pruche fails to teach or suggest the use of an indicator that includes at least one dye which changes in color or color intensity when in solution with at least one substance found on human skin. Rather, Pruche’s substance is colored prior to application on skin. As a result, Pruche also fails to teach or suggest the claimed use of an indicator wherein a visual change color or color intensity in the at least one dye is proportional to the amount of the oil present in solution. Moreover, Pruche’s substance clearly is not activated in response to a reaction of the indicator with the at least one substance found on the skin after a period of time to effect a visually discernable change that is a visual change in the color or color intensity of the at least one dye of the flowable indicator. Accordingly, the rejection of independent claims 24 38 and 39 and their respective dependent claims is traversed.

Likewise, the rejection of claims 24-26 and 35 based on Lopukhin is traversed because Lopukhin merely discloses a method of determining skin tissue cholesterol by applying one or more drops of a complex to the skin, wherein the complex binds to the cholesterol in the skin. As taught by Lopukhin, after rinsing the non-bound complex, an indicating agent is applied to the

skin with reacts with the bound complex to cause a color change; that color change is then used to determine cholesterol content.

However, the color change is a result of the reaction between Lopukhin's complex and the subsequent application of the indicating agent. This is the only reasonable interpretation of the teachings of Lopukhin because, if the indicating agent were reactive only with the cholesterol in a subject's skin, there would be no need to use the complex which binds with the cholesterol prior to applying Lopukhin's indicating agent.

Therefore, Lopukhin fails to teach or suggest the claimed use of an indicator that includes at least one dye which changes in color or color intensity when in solution with at least one substance found on human skin. If Lopukhin's complex were considered to correspond to the claimed indicator, the complex does not change color or color intensity when in solution with at least one substance found on human skin because the complex does changes color in response to the indicating agent. If Lopukhin's indicating agent was considered to correspond to the claimed indicator, that indicator does not change color when in solution with at least one substance found on human skin because the indicating agent is reacting to the complex. Further, if the combination of the complex and the indicating agent were considered to correspond to the claimed indicator, there would be no color change in response to application on the skin because the combination of the complex and the indicating agent would have already reacted to each other and changed color in response to their combination and prior to application on a subject's skin. Therefore, no interpretation of Lopukhin may be made to support a reasonable anticipation rejection of independent claims 24 and 35 and their respective claims. Accordingly, the rejection of independent claims 24 and 35 and their respective dependent claims is traversed.

For all of the above reasons, withdrawal of the rejection of claims 24-26, 29-31, 35 and 38-40 is respectfully requested.

In view of the above, it is submitted that all of the claims are in condition for allowance and such action is respectfully requested. If there is any issue remaining to be resolved, the examiner is invited to telephone the undersigned at (202) 371-6371 so that resolution can be promptly effected.

It is requested that, if necessary to effect a timely response, this paper be considered a Petition for an Extension of Time sufficient to effect a timely response with the fee for such extensions and shortages in other fees, being charged, or any overpayment in fees being credited, to the Account of Barnes & Thornburg LLP, Deposit Account No. **02-1010** (47353-46503).

Respectfully submitted,

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